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IN THE

Supreme Court of the United States

October Term, 1954

No. 571

MOLLIE SAWYER, *Petitioner,*

vs.

ROBERT T. STEVENS, Secretary of the Army, et al.
Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia

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vs.

ROBERT T. STEVENS, Secretary of the Army, et al.
Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia

To the Honorable Chief Justice, and the Associate Justices of the Supreme Court of the United States:

The petitioner, Mollie Sawyer, appellant below, prays that a writ of certiorari to review the judgment of the United States Court of Appeals for the District of Columbia entered on November 10, 1954 (R. 20).

OPINIONS BELOW

The District Court did not render an opinion. The opinion of the United States Court of Appeals for the District of Columbia is set forth on page 18-19 of the record. It has not yet been officially reported.

JURISDICTION

The judgment of the United States Court of Appeals for the District of Columbia was entered on November 10, 1954. This petition for certiorari is filed within ninety days thereafter pursuant to the provisions of Title 28 U.S.C. Section 2101 (c).

QUESTIONS INVOLVED ON APPEAL

Whether the petitioner a permanent civil service employee of the United States may be involuntarily retired without a hearing, and on secret evidence, and whether where she had diligently prosecuted her claim could she be guilty of laches.

STATUTES INVOLVED

The pertinent statutes are set forth in Appendix A, infra, pp. 13-17)

STATEMENT OF THE FACTS

In order to comply with Rule 23, 1 (g) the petitioner will first state that the jurisdiction of the United States District Court for the District of Columbia, which was the Court of first instance to entertain this cause of action, is contained in Title 11, Section 306 of the District of Columbia Code giving that Court jurisdiction of all actions or suits of a civil nature at common law or in equity.

The petitioner brought this suit against the Secretary of the Army and the members of the Civil Service Commission fixing and determining her rights as a civil service employee of the United States. There has been a substitution of proper parties since the original com-

plaint was filed. (R.2-7) The complaint alleged among other things that the petitioner entered the employment of the United States as a civilian employee during the month of October, 1934 (R.3) and thereafter was employed in various agencies until March, 1942 when she entered the employment of the War Department where she was continuously employed from April, 1942 to October, 1949 in a capacity of a CAF-2 Clerk Typist (R.4). The petitioner acquired the status of a permanent civil service employee.

The petitioner further alleges that on or about April 13, 1949 the officials under the jurisdiction of the Secretary of the Army requested her involuntary retirement in accordance with the laws of the United States relating to the retirement of civil service employees. That on May 13, 1949 the Chief of the Retirement Division of the Civil Service Commission advised the petitioner that she was found to be totally disabled for useful and efficient service within the meaning of the Retirement Act, and that she was retired with an annuity. (R.4) Petitioner appealed this decision to the Board of Appeals & Review of the Civil Service Commission which rendered a decision on July 8, 1949 affirming the decision of the Chief of the Retirement Division. The petitioner then appealed to the Commissioners of the Civil Service Commission, and on January 19, 1950 the decision was tentatively affirmed by the then Chairman of the United States Civil Service Commission (R.5,109) Thereafter numerous considerations were given to the petitioner's further appeal by a letter from the Chairman of the Civil Service Commission dated April 13, 1951, (R.92) on May 4, 1951, (R.93,94) and finally by a demand of counsel for the petitioner dated July 6, 1951 (R.88, 89), and the final denial by the Chairman of the Civil Service Commission on July 12, 1951 (R.90). The petitioner having fully exhausted all of her administrative appeals, suit was filed on August 13, 1951.

The petitioner alleged in the complaint (R.5) that prior to any decision made, she requested that she be given a full hearing at the Regional Office of U. S. Civil Service Commission in St. Louis, Missouri where she was employed. She further alleged that prior to any decision adverse to her, she was not permitted to examine the evidence of record including medical reports of Doctors or lay evidence so as to present a proper defense to the request for her involuntary retirement. The petitioner further alleged that she was never fully acquainted with all the evidence against her in support of the request for her involuntary retirement. Petitioner further alleged that she was not permitted to obtain copies of medical reports of government doctors filed in her case, and that she could not properly prepare or present her defense against the action of her supervisors in requesting her involuntary retirement (R.5).

Petitioner further alleged that on July 6, 1951, through her counsel, she requested the Chairman of the Civil Service Commission (R.88, 80, 90) that her case be reopened and that she be permitted to examine the evidence of record and to otherwise properly prepare her case for a proper hearing, but that this request was denied on July 12, 1951 (R.90).

It is undisputed that the petitioner was retired involuntarily and that she was not permitted to examine the evidence against her, which was the basis of her retirement, prior to the time that she was actually involuntarily retired. Strangely enough, the medical reports made by the government doctors which was the basis of the evidence against the petitioner were introduced in evidence at the trial (R.120, 121, 122, 123, 124, 125). It appears that the petitioner was involuntarily retired based upon an alleged mental condition. Nevertheless, it is interesting to know that the medical report signed by

three medical doctors (R.125), finds that the neurological examination is negative. It is also interesting to note that the petitioner has been practically continuously employed in the position of a secretary since the time she was involuntarily retired, and no evidence was offered at the trial that during this period of time she had any mental disability. The District Court made findings of fact and conclusions of law against the petitioner (R.15-21). From this judgment, the petitioner appealed to the United States Court of Appeals for the District of Columbia. (R.22)

On November 10, 1954 the petitioner's case was decided by the said United States Court of Appeals (R.129). Despite the fact that the petitioner raised important questions on appeal which have not been decided in this jurisdiction and which questions affect the rights of thousands if not millions of government employees, the Court of Appeals rendered a Per Curiam opinion affirming the judgment and deciding none of the important questions raised on appeal, but all that can be gotten out of the opinion of the Court of Appeals is that judgment is affirmed with no reasons given for the affirmance.

SPECIFICATIONS OF ERRORS TO BE URGED

The petitioner will urge in this case that she was entitled to a fair and impartial hearing in the matter of her involuntary retirement, and that she was entitled to know the evidence contained in her file against her which was the basis of the request for her involuntary retirement so that she could properly present her defense to the request for her involuntary retirement.

The petitioner will also urge that since she was a permanent civil service employee that she could not be removed from her position as such employee until the

officials had complied with Title 5 (652) USC which required charges to be filed against her with specified findings by the proper officials. Petitioner will also urge that there was no basis in fact for any findings of fact or conclusions of law that her action was barred by laches, and that the record conclusively shows that she diligently prosecuted her claim and that there were no facts upon which the Courts could have found that she was guilty of laches.

REASONS FOR GRANTING THE WRIT

The petitioner asserts that a writ of certiorari should be granted under Subdivision (b) of Part V of Rule 19 of this Court, in that the United States Court of Appeals for the District of Columbia has rendered a decision on an important question of Federal Law which has not been, but should be, settled by this Court. Furthermore, the said Court has decided a Federal question in a way in conflict with the applicable decisions of this Court, and has sanctioned such a departure by the lower court so as to call for the exercise of this Court's power of supervision.

This Court has not decided the question of whether a permanent civil service employee can be summarily involuntarily retired without a hearing and upon secret evidence contained in the file. No more important question involving the rights of millions of government employees could come before this Court, and yet the Court of Appeals below decided the important questions of law involved as if it were a case where the petitioner had appealed a judgment against her based upon an issue of fact which was amply sustained by the testimony. The Court of Appeals clearly shirked its duty in this case.

Attention of the Court is directed to the fact that the regulations of the Civil Service Commission 5 CFR 1949

Edition 2915 (A15-16-17) provided that an appeal may be taken to the Civil Service Commission from the final action or order of the Retirement Division. Necessarily, it must be concluded that if there is such a right of appeal, that the employee is entitled to a hearing, otherwise, the language providing for an appeal would be meaningless and if this conclusion is reached, it would seem that a right to a hearing embraces the right to a reasonable opportunity to know the claims of the opposing party and to meet them. The rule in this regard is well stated in 42 Am Juris page 483, par. 139:

> "• • • Those who are brought into contact with the government in a quasi-judicial proceeding aimed at the control of their activities are entitled to be fairly advised of what the government proposes, and to be heard upon its proposals before it issues its final command, even though the proceedings is instituted upon a general inquiry and is in form not adversary, where it has all the essential elements of contested litigation. Where the government formulates no issues and furnishes no statement or summary of its contentions and no proposed findings in a quasi-judicial proceeding instituted on general inquiry, and no opportunity is afforded for examination of findings made by the active prosecutors for the government and adopted by the officer issuing the order without affording the party against whom the order is issued any reasonable opportunity to know the claims thus presented, and to contest them, there is a vital defect in the procedure."

This Court in the case of *Morgan* v. *United States and the Secretary of Agriculture, 304 U.S. 1, 82 L.Ed. 1129,* discussed at length the rights of persons appealing before administrative agencies. While the question involved in the Morgan case related to the validity of regulations issued by the Secretary of Agriculture fixing maximum rates to be charged by the Market Agency at the Kansas City Stock-yards, this Court commented generally on all

the administrative hearings and laid down the rule that a fair and open hearing in an administrative proceeding of a quasi-judicial character is essential to the validity of a resulting administrative hearing. This Court further said, that a right to a hearing embraces not only the right to present evidence but also a reasonable opportunity to know the claims of the opposing party and to meet them, and that the right to submit argument implies that opportunity, otherwise, the right might be but a barren one. This Court further said, that those who are brought into contact with the government in a quasi-judicial proceeding aimed at the control of their activities are entitled to be fairly advised of what the government proposes and to be heard upon its proposals before it issues its final command.

The attention of this Court is directed to the fact that the petitioner, a permanent civil service employee, was given a right of appeal under the Civil Service regulations and the language of this Court in the Morgan case, supra, that the right to submit argument implies that the opportunity to know the evidence against her is particularly applicable to the petitioner's case. Otherwise, as the Court said in the Morgan case, the right would be but a barren one. The closest case to be found on the right of a civil service employee to be informed of the evidence against him in a removal case is the case of *English* v. *Long Beach, 35 Cal. 2nd 155, 217 P. 2nd 22, 18 ALR 2nd 547:*

In that case, the Municipal Civil Board of the City of Long Beach sustained the dismissal of a patrolman on the ground that he was physically unable to perform his duties, in accordance with civil service rules and regulations which required an employee who had been absent for six months or more to pass a physical examination by a board of physicians. In reaching this decision the board

considered medical evidence taken by some of its members outside the hearing and in the absence of the patrolman and his attorney. The patrolman obtained a writ of mandate annulling the board's order and compelling his reinstatement. During the pendency of the city's appeal from that writ, the city continued to employ him due to the fact that he obtained an order that the appeal should not operate as a stay of execution of the judgment granting the writ. The Supreme Court of California held that the patrolman had been denied a fair hearing because the order of the board was based upon evidence taken outside the hearing and in the absence of the patrolman and his attorney. In the Law Reports Annotated commencing at 18 ALR2d page 552, and particularly at page 555, is a long line of decisions which hold that administrative boards cannot withhold evidence and make decisions on the evidence so obtained.

There is no necessity for giving a permanent civil service employee a right of appeal within the Civil Service Commission in involuntary retirement cases if that employee cannot know the basis of the reasons for requesting her involuntary retirement. In other words, if the United States Civil Service Commission can render a decision adverse to such persons as this petitioner on a request for involuntary retirement, then the right of appeal which she had is a pure mockery, a right which might not well exist because it serves no useful purpose to the petitioner. This Court in the case of *Bailey* v. *Richardson et al,* by a divided Court (4 to 4), *341 U.S. 918, 95 L.Ed. 1352,* affirmed the decision of the U. S. Court of Appeals for the District of Columbia (*182 F.2nd 46*). In that case the government employee was not a permanent civil service employee and had been removed from government service on the grounds of suspicion of her loyalty. It was contended by the plaintiff in that action that she was entitled to know what evidence was against

her. This petitioner has greater rights than the plaintiff in the Bailey case, supra, because she was a permanent civil service employee and acquired the rights under Title 5 USC 652 which provides in part as follows:

> "No person in the classified civil service of the the United States shall be removed or suspended without pay therefrom except for such cause as will promote the efficiency of such service and for reasons given in writing. Any person whose removal or suspension without pay is sought shall (1) have notice of the same and of any charges preferred against him; (2) be furnished with a copy of such charges; (3) be allowed a reasonable time for filing a written answer to such charges, with affidavits; and (4) be furnished at the earliest practicable date with a written decision on such answer. No examination of witnesses nor any trial or hearing shall be required except in the discretion of the officer or employee directing the removal or suspension without pay. Copies of the charges, the notice of hearing, the answer, the reasons for removal or suspension without pay, and the order of removal or suspension without pay shall be made a part of the records of the proper department or agency, as shall also the reasons for reduction in grade or compensation; and copies of the same shall be furnished, upon request, to the person effected and to the Civil Service Commission. This subsection shall apply to a person within the purview of section 863 of this title, only if he so elects."

The petitioner urges this Court to conclude that her involuntary retirement is tantamount to a removal from the classified civil service in accordance with the statute above quoted, and that she could not be involuntarily retired without charges being filed against her. This Court recently denied a petition for certiorari in the case of *Brownell* v. *Roth, 99 L.Ed. Adv. 47* where the respondent had been removed from his governmental position without the compliance of the requirements of Title 5 USC 652 quoted above, and the lower Court had ordered resto-

ration. The petitioner further shows to the Court that the action instituted by her was not barred by laches. No more diligence could have been shown in the prosecution of any claim than the diligence shown by this petitioner. The Civil Service Commission had authority at all times to reopen her case, and she did not get a final denial or a refusal to reopen her case until a short time before the suit was instituted. The mere lapse of time, and that is all the evidence in this case shows, to sustain the respondent's position on the question of laches and it has long since has been decided, that the lapse of time must be so great that it would be inequitable to permit a plaintiff to assert rights. The Court below ignored its own decision in the case of *Hill* v. *Chambers, 68 F.2d 781, 63 App. DC 36* in considering this question, although from the opinion of the Court below, the Court apparently did not pass on the question. All that can be reasonably understood from the opinion of the Court which was rendered in this case is that the judgment of the United States District Court for the District of Columbia from which the petitioner appealed was affirmed.

The petitioner reiterates that no more important question of law concerning the rights of a permanent civil service employee has come before this Court. If a faithful and honest employee of the United States government can be as summarily removed from employment such as this petitioner upon secret and undisclosed evidence which she had no opportunity to rebut before the Civil Service Commission, then government employees must live in constant terror that on the morrow they may be summarily dismissed on evidence of which they have no knowledge or to which they cannot present a proper defense. No other situation could do more to lower the moral of government employees. This Court should take jurisdiction in this case, and determine the issues of law involved.

CONCLUSION

WHEREFORE, the petitioner prays that a writ of certiorari may issue under the seal of this Honorable Court in this cause directed to the United States Court of Appeals for the District of Columbia and that upon such review that judgment of the said United States Court of Appeals be vacated, reversed and set aside and this cause remanded to the said Court with instructions to proceed further in accordance with the views of this Court.

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Attorney for the Petitioner.

APPENDIX "A"

5 U.S.C. 709. Powers and duties of Civil Service Commission: For the purpose of administration, except as otherwise provided herein, the Civil Service Commission is hereby authorized and directed to perform, or cause to be performed, any and all acts and to make such rules and regulations as may be necessary and proper for the purpose of carrying the provisions of this chapter into full force and effect.

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5 U.S.C. 710. Retirement for disability; employees entitled to; application; medical examination; time limitation. Any officer or employee to whom sections 691, 693, 693-1, 698, 707, 708, 709-715, 716 to 719-1, 720-722, 724, 725, 727-729, 730, 731, 733, 736b and 736c of this title applies who shall have served for a total period of not less than five years computed as provided in section 707 of this title, and who, before meeting the age and service requirements for retirement under section 691(a) of this title, becomes totally disabled for useful and efficient service in the grade or class of position occupied by the officer or employee, by reason of disease or injury not due to vicious habits, intemperance, or willful misconduct on the part of the officer or employee, shall upon his own application or upon the request or order of the head of the department, branch, or independent office concerned, be retired on an annuity computed in accordance with the provisions of section 698 of this title: *Provided,* That proof of freedom from vicious habits, intemperance, or willful misconduct for a period of more than five years next prior to becoming so disabled for useful and efficient service, shall not be required in any case. No officer or employee shall be retired under the provisions of this section unless examined by a medical officer of the United States, or a duly qualified physician

or surgeon, or board of physicians or surgeons, designated by the Civil Service Commission for that purpose, and found to be disabled in the degree and in the manner specified herein. No claim shall be allowed under the provisions of this section unless the application for retirement shall have been executed prior to the applicant's separation from the service or within six months thereafter. The time limitation for execution of claims for retirement under the terms of this section may be waived by the Civil Service Commission in case of an officer or employee who at the date of separation from service or within six months thereafter is receiving hospital treatment, but the application in such case must be filed with the Civil Service Commission not later than six months after the termination of such hospitalization; in the case of any such person heretofore separated from service application may be filed within six months after the effective date of this Act. Such time limitation may similarly be waived in the case of an officer or employee who at the date of separation from service or within six months thereafter is mentally incompetent, but the application in such case must be filed with the Civil Service Commission within one year from the date of restoration of such person to competency or the appointment of a fiduciary whichever is the earlier. Such time limitation may also be waived in the case of an officer or employee whose disabling condition is essentially chronic, deteriorative, or progressive in nature and can reasonably be assumed to have existed at date of separation, but the application in such a case must be filed with the Civil Service Commission within one year after the date of separation; in the case of any such person heretofore separated from service, application may be filed within six months after August 8, 1949.

5 U.S.C. 711. Same; medical examination, restoration to service. Every annuitant retired under the provisions of this section unless the disability for which retired be permanent in character, shall at the expiration of one year from the date of such retirement and annually thereafter, until reaching age sixty, be examined under the direction of the Civil Service Commission by a medical officer of the United States, or a duly qualified physician or surgeon, or board of physicians or surgeons designated by the Civil Service Commission for that purpose, in order to ascertain the nature and degree of the annuitant's disability, if any. If an annuitant shall recover before reaching age sixty and be restored to an earning capacity which would permit him to be appointed to some appropriate position fairly comparable in compensation to the position occupied at the time of retirement, payment of the annuity shall be continued temporarily to afford the annuitant opportunity to seek such available position, but not in any case exceeding one year from the date of the medical examination showing such recovery. Should the annuitant fail to appear for examination as required under this section, payment of the annuity shall be suspended until continuance of the disability shall have been satisfactorily established. The Civil Service Commission may order or direct at any time such medical or other examination as it shall deem necessary to determine the facts relative to the nature and degree of disability of any officer or employee retired on an annuity under this section.

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5 CFR (1949 Ed.) 29.11. Disclosure of information. (a) (1) Files, records, reports, and other papers and documents pertaining to any claim filed with the Civil Service Commission, whether pending or adjudicated, will be deemed confidential and privileged, and no disclosure thereof will be made except as provided herein.

(2) Disclosure of information from the files, records, reports, and other papers and documents shall be made to a claimant or to his duly authorized representative in matters concerning himself alone when such disclosure would not be injurious to the physical or mental health of the claimant or be regarded as a breach of confidence.

Determination as to when disclosure of information would be injurious to the physical or mental welfare of a claimant will be made by the Medical Division.

(3) By "a duly authorized representative of claimant" is meant any person who has satisfied the Commission of his authority to act.

(4) The name or address of a beneficiary designated by an employee or annuitant will, during the life of the employee or annuitant, be furnished only to the designator when request therefor is made in writing over the signature of the designator.

(5) Such information as may properly be disclosed to a claimant personally shall, in the event of his death, be disclosed upon proper request to the duly appointed representative of his estate, or to such person as may be designated by such representative, or to a duly designated beneficiary. Where no representative of the claimant's estate has been appointed, the claimant's next of kin shall be recognized as the representative of his estate.

(6) Where copies of documents or other records are desired by or in behalf of parties to a suit, whether in a court of the United States or in any other court, such copies shall be furnished to the court only, and on an order of the court or subpoena duces tecum, addressed to the President, U. S. Civil Service Commission, requesting the same.

(7) Where a process of a United States court or other court requires the production of documents or rec-

ords contained in the retirement files of a claimant such documents will be produced in the court out of which the process has issued. Where original records are produced, they must remain at all times in the custody of a representative of the Civil Service Commission, and if offered or received in evidence, permission shall be obtained to substitute a copy so that the original record may remain intact in the file.

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5 CFR (1949 Ed.) 29.15. *Appeals.* (a) An appeal may be taken to the Civil Service Commission, from the final action or order of the Retirement Division affecting the rights or interest of any person or of the United States under the civil-service retirement law, except as provided in this section.

(b) Appeals must be filed by a claimant or a duly accredited representative, but no appeal shall lie to the Commission's Board of Appeals and Review until action has been completed by the Retirement Division. An appeal taken in behalf of a claimant by or through a representative who is not recognized by the Commission, or whose recognition has been cancelled, shall not be entertained.

(c) • • •

(2) In applications for disability retirement made by a department or establishment of the Government the time for filing an appeal shall be not later than 30 days from date of receipt of notice of final action or order.

• • • •

(d) Each appeal shall show the name and post-office address of appellant, his retirement claim number, the date and substance of the action from which the appeal is taken, and full reasons for the appeal.

• • • •

(f) The mandate of the decision by the Board of Appeals and Review shall be carried into effect within 60 days from the date of the receipt of notice of the decision by the Retirement Division (except as hereinafter provided), unless the decision shall sooner be recalled. A proper explanation of the decision rendered shall be mailed to the appellant and/or his duly authorized representative by the Board of Appeals and Review.

United States Court of Appeals For the District of Columbia Circuit

Filed Nov 10 1954 Joseph W. Stewart, Clerk.

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 12073

MOLLIE SAWYER,

Appellant

v.

ROBERT T. STEVENS, Secretary of the Army, et al.,

Appellees

Appeal from the United States District Court for the District of Columbia

---

Decided November 10, 1954

Mr. Claude L. Dawson for appellant.

Mr. Benjamin Forman, Attorney, Department of Justice, of the bar of the Supreme Court of Massachusetts, pro hac vice, by special leave of Court, with whom Messrs. Leo A.

Rover, United States Attorney, and Paul A. Sweeney, Attorney, Department of Justice, were on the brief, for appellees. Messrs. Lewis A. Carroll, Assistant United States Attorney, and Julian H. Singman, Attorney, Department of Justice, also entered appearance for appellees.

Before Edgerton, Fahy and Danaher, Circuit Judges.

Per Curiam: Appellant filed suit in the District Court for a declaratory judgment that her separation from Government employment was illegal. Because of disability she had been involuntarily retired from her position on an annuity, under procedures set forth in the Civil Service Retirement Act,[1] and regulations of the Civil Service Commission, 5 CFR §§ 29.1 et seq. (1949).

Answer to the complaint was filed by the appropriate Government officials, followed in due course by a hearing in the District Court. The court made findings of fact and entered conclusions of law, upon the basis of which judgment was entered dismissing the complaint. Among the conclusions of law was one that the action was barred by laches, which had been specially pleaded.

The appeal presents no basis for reversing the judgment of the District Court and it accordingly is

Affirmed.

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[1] 41 Stat. 614 *et seq.*, as amended, 46 Stat. 472, as amended, 5 U.S.C. § 710 (1952).

United States Court of Appeals For the District of Columbia Circuit

Filed Nov 10 1954 Joseph W. Stewart, Clerk.

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

OCTOBER TERM, 1954.

No. 12,073

MOLLIE SAWYER,
Appellant,

v.

ROBERT T. STEVENS,
Secretary of the Army, et al.,
Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA.

Before: Edgerton, Fahy, and Danaher, Circuit Judges.

Judgment

This cause came on to be heard on the transcript of the record from the United States District Court for the District of Columbia, and was argued by counsel.

On consideration whereof, It is ———— ordered and adjudged by this Court that the judgment ———— ———— of the said District Court appealed from in this cause be, and the same is hereby, affirmed.
Dated: November 10, 1954.

Per Curiam.

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Filed Dec 22 1954 Joseph W. Stewart, Clerk.

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 12,073

MOLLIE SAWYER,

Appellant,

vs.

ROBERT T. STEVENS,
Secretary of the Army, et al.,

Appellees.

Designation of Record

The Clerk will please prepare a certified transcript of record for use on petition to the Supreme Court of the United States for writ of certiorari in the above-entitled case, and include therein the following:

1. Joint appendix.
2. Opinion.
3. Judgment.
4. Designation of record.
5. Clerk's certificate.

/s/ Claude L. Dawson
Claude L. Dawson
Attorney for the Appellant
1012 - 14th Street, N. W.
Washington 5, D. C.

CERTIFICATE OF SERVICE

I, Claude L. Dawson, attorney for the said Appellant in the above-entitled cause, hereby certifies that service of the within and foregoing designation of record in the above entitled case was made by enclosing a true copy thereof addressed to the Hon. Leo A. Rover, United States Attorney for the District of Columbia, Courthouse, Washington, D. C., postage prepaid, and depositing same in the U. S. mails at Washington, D. C. on December 22, 1954.

/s/ Claude L. Dawson
Claude L. Dawson

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

I, JOSEPH W. STEWART, Clerk of the United States Court of Appeals for the District of Columbia Circuit, hereby certify that the foregoing pages, numbered from 1 to 130, both inclusive, constitute a true copy of the Joint Appendix to the briefs and of the record and proceedings in the said Court of Appeals, as designated by counsel for appellant, in the case of:

MOLLIE SAWYER,
Appellant,

v.

ROBERT T. STEVENS,
Secretary of the Army, et al.,
Appellees.

No. 12,073 ———— OCTOBER Term, 1954, as the same remain upon the files and records of said Court of Appeals.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of

Washington, this ——— twenty-ninth ——— day of December ———, A.D. 1954.

(SEAL)

Joseph W. Stewart

Clerk of the United States Court of Appeals for the District of Columbia Circuit.

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In the Supreme Court of the United States

OCTOBER TERM, 1954

No. 571

MOLLIE SAWYER, PETITIONER

v.

ROBERT T. STEVENS, SECRETARY OF THE ARMY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The findings of fact and conclusions of law of the United States District Court for the District of Columbia (J. A. 15-21) were entered without opinion. The opinion of the United States Court of Appeals for the District of Columbia Circuit (Pet. App. 18-19) is not yet reported.

JURISDICTION

The judgment of the court of appeals was entered on November 10, 1954 (Pet. App. 20). The

petition for a writ of certiorari was filed on February 1, 1955. The jurisdiction of this Court is presumably invoked under 28 U. S. C. 1254.

QUESTION PRESENTED

Petitioner is a former federal employee who was involuntarily retired on disability grounds. The question presented is whether her suit seeking a declaration that her retirement was invalid is barred, as held by both courts below, by laches.

STATEMENT

On July 29, 1949, petitioner was separated from her position as a clerk-typist CAF-2 at the Army Finance Center, St. Louis, Missouri, and involuntarily retired on an annuity for disability, as a result of a determination made by the Board of Appeals and Review of the Civil Service Commission on July 8, 1949, that she was totally disabled within the meaning of the Civil Service Retirement Act. In this proceeding, brought on August 13, 1951, against the Secretary of the Army and the members of the Civil Service Commission, petitioner seeks a declaration that her separation is invalid (J. A. 7). The facts, as revealed by the evidence and the findings of the district court, may be summarized as follows:

On February 18, 1949, petitioner was examined by Dr. Cecil E. Duncan, Post Medical Officer at the Army Finance Center, who recommended that she be referred to a psychiatrist for further examination (Fdng. 3, J. A. 15; Def. Exh. 10f, J. A. 121). Pursuant to that recommendation, on March 14,

1949, petitioner was examined by a Board of Psychiatrists at the Veterans Administration Regional Office, St. Louis, Missouri (Fdng. 3, J. A. 15-16). The Psychiatric Board consisted of three medical officers of the Veterans Administration, Drs. James A. Mosco, John E. Miksicek, and W. J. Robinson (Fdng. 3, J. A. 15).

On the same day, the Chief Medical Officer of the Veterans Administration, Dr. Horace E. Groom, advised the Personnel Director of the Army Finance Center in a confidential letter that the Psychiatric Board had reported that petitioner "is suffering from a Paranoid Reaction" (Def. Exh. 10e, J. A. 120). On April 14, 1949, petitioner was asked to sign an application for voluntary retirement. She refused to comply with this request. (J. A. 63.) On April 21, 1949, the Personnel Director filed with the Regional Director of the Civil Service Commission a request directed to the Retirement Division of the Commission that petitioner be involuntary retired for disability (Fdng. 2, J. A. 15). Attached to this request (Def. Exh. 10b, J. A. 117) were the memorandum of Dr. Duncan (Def. Exh. 10f, J. A. 121), the confidential letter of Dr. Groom (Def. Exh. 10e, J. A. 120), a statement by petitioner's superior officer, Major R. P. Fields (Def. Exh. 10c, J. A. 118), and an executed standard form application for retirement (J. A. 118).

On April 25, 1949, the Regional Director of the Commission transmitted these documents to the Retirement Division of the Commission at Wash-

ington, D. C. (Fdng. 4, J. A. 16). Also transmitted by the Regional Director was the complete confidential report, dated March 14, 1949, of the Psychiatric Board (Def. Exh. 10h, J. A. 122), which the Regional Director had obtained from Dr. Groom (Def. Exh. 10a, 10g, J. A. 116, 121-122).

By letter dated May 13, 1949, the Retirement Division advised petitioner that she was "totally disabled for useful and efficient service within the meaning of the Retirement Act" (Def. Exh. 1, J. A. 97-98). Petitioner was further informed that (*ibid*):

> You have the privilege to furnish evidence, medical preferred, for the purpose of obtaining further consideration of the claim or appealing from the action taken.
>
> The filing of additional evidence or of an appeal must be accomplished not later than 30 days from the date of this letter. If an appeal is made, it should be filed in accordance with the enclosed copy of the regulations governing civil service retirement appeals and addressed to the Civil Service Commission, Retirement Division, Washington 25, D. C.

By letter dated June 3, 1949, petitioner appealed from the decision of the Retirement Division (Fdng. 6, J. A. 17; Def. Exh. 2a, J. A. 98). In her letter, petitioner asked "that the report of the Psychiatric Board dated 14 March 1949 be withdrawn and canceled" and detailed the reasons for this request (Def. Exh. 2a, J. A. 99). Submitted

with the letter in support of her appeal were a psychiatric report dated June 3, 1949, by Dr. Robert E. Britt, a statement dated May 6, 1949, by Dr. Britt, and a statement dated May 24, 1949, by Dr. Charles A. Jost (Fdng. 6, J. A. 17).

Dr. Jost's brief statement reported that petitioner had been a patient of his since May 3, 1949, that she had acute sinusitis and otitis media, and that he had "advised that she may return to work" (Def. Exh. 2c, J. A. 106). Similarly, Dr. Britt's one sentence report of May 6, 1949, briefly stated that he had examined petitioner on April 27, 1949, and believed "it will be satisfactory for her to return to work" (Def. Exh. 2d, J. A. 106). Dr. Britt's longer psychiatric report of June 3, 1949, however, was to the contrary. (Def. Exh. 2b, J. A. 104-105. In pertinent part, this report stated that (J. A. 105):

> The chief features of the mental examination noted at this time consisted of detailed circumstantiation in addition to numerous details regarding difficulties experienced at work and her reaction to them from the point of view of an individual who has evidently gone through a period of prolonged illness. I am unable to verify her statements, as she is my sole source of information at this time. Regardless of whether they are correct or incorrect, her attitude is that of one who has had numerous misgivings and difficulties with circumstances as they have existed. It is my belief that if she were to return to the same

> circumstances or the same type of work it would be inadvisable and definitely poor for her hygienically. I am, therefore, heartily in accord with her recent suggestion to change to a different occupation or different occupational circumstances at this time.

Under the regulations of the Civil Service Commission, petitioner's appeal was referred to the Commission's Board of Appeals and Review for final decision (Fdng. 7, J. A. 17; see 5 CFR 29.15(f) (Pet. App. 18)). By letter dated July 8, 1949, the Chairman of the Board of Appeals and Review notified the petitioner that (Fdng. 7, J. A. 17; Def. Exh. 3, J. A. 107):

> The Board of Appeals and Review of this office has given careful consideration to the entire record in your case including the supplemental information you have furnished. However, the lay and medical evidence in your file indicates that you are not at the present time physically qualified for continuation as Clerk-Typist. Therefore, as total disability within the meaning of the Retirement Act is indicated the action taken in allowing the claim filed for your retirement has been affirmed.

On July 19, 1949, the Army Finance Center was informed of the decision of the Board of Appeals and Review. In accordance therewith, petitioner was separated from her employment on July 29, 1949, and her retirement annuity became payable on August 1, 1949. (Fdng. 8, J. A. 17-18.)

From August 1949 to July 1951, petitioner, or her attorneys, wrote a series of 23 letters to the Civil Service Commission, and to members of the Commission, asking for reconsideration of the decision of the Board of Appeals and Review of July 8, 1949 (Fdng. 10, J. A. 18, 41, 42, 45-47). Although petitioner had not requested a hearing or asked to examine the medical evidence on file when she had appealed to the Board of Appeals and Review, she asked in these letters that she be granted a hearing at a suitable location and that the medical evidence be fully disclosed to her (Fdng. 9, J. A. 18). Petitioner did not, however, submit any medical evidence in support of these requests for reconsideration (Fdng. 10, J. A. 18, 49-50). Her first request for a hearing was made on October 14, 1949 (J.A. 42); her first request for full disclosure of the medical reports was made on February 9, 1950 (J. A. 113-114).

In requesting full disclosure of the medical reports, petitioner, or her attorney, repeatedly advised the Commission that she knew the general contents of those reports. Thus, in her letter of January 22, 1950, petitioner stated that, at her exit interview, "I was shown a photostatic copy of the Psychiatric Report charging me with 'Paranoia.' Excerpts from the more detailed report were read to me, a portion of which reads: * * * She is dangerous * * * I would charge her with inefficiency and retire her from service * * * Signed, Dr. Mosco," (Def. Exh. 7, J. A. 110-111). Again,

on February 9, 1950, petitioner stated that "in accordance with regulation 29.11,[1] I am requesting full disclosure of Medical Reports. I maintain that it will not be injurious to me since I already know of this. Also I saw the photostatic copy of the preliminary report. It was placed into my hands by Lt. Stuart on 13 April 1949 and a stenographer was present and recorded the entire interview." (Def. Exh. 8, J. A. 113-114.) Similarly, petitioner's former attorney informed the Commission on September 2, 1950, that "Miss Sawyer is fully aware of the nature of the material contained in her medical reports. This information was given to her by those who instigated her erroneous involuntary retirement action in April 1949. Therefore, these medical reports would in no way be injurious to her, nor could it be considered a breach of confidence." (Def. Exh. 9, J. A. 115-116.)

Each of these requests for reconsideration was denied (Fdng. 10, J. A. 18). In response to each request, petitioner was advised in substance that the determination of disability made by the Board of Appeals and Review on July 8, 1949, was correct and that continuation of her retirement status would depend upon the result of her annual medical

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[1] In pertinent part, Section 29.11 of the Commission's regulations provides that the files of the Commission will be deemed confidential and privileged and that information from the files will be disclosed to a claimant "when such disclosure would not be injurious to the physical or mental health of the claimant or be regarded as a breach of confidence." See Pet. App. 15-17.

reexamination (Fdng. 10, J.A. 18-19; Def. Exhs. 5, 6, Pltf. Exhs. 2, 3, 4, 5, J.A. 108, 109, 90, 91, 92, 93).[2]

On March 24, 1950, upon notice from the Commission, petitioner agreed to and was given a medical examination at St. Louis, Missouri, by a doctor designated by the Commission. As a result of this examination, petitioner was notified by the Commission that her disability condition was a continuing one. (Fdng. 11, J. A. 19.)

On August 13, 1951, petitioner instituted this action, asking for a declaration that her retirement is invalid for want of a quasi-judicial hearing and because of the Commission's refusal fully to disclose the medical reports. (J. A. 2-7). The complaint did not, however, challenge the Commission's determination of March 24, 1950, after her annual reexamination, that she was still disabled.

Subsequently, on October 12, 1951, upon notice from the Commission, petitioner agreed to and was given another medical examination at St. Louis, Missouri, by a doctor designated by the Commission. Again, as a result of this examination, petitioner was notified by the Commission that she had a continuing disability. (Fdng. 12, J. A. 19.) Similarly, on May 13, 1953, prior to the trial of this cause on June 3, 1953, petitioner was once again notified that she would be examined by a doctor designated by the Commission (Fdng. 13, J.A. 19). Thereafter, on June 16, 1953, petitioner was given

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[2] 5 U.S.C. 711 provides for the annual examination of any annuitant retired for disability to ascertain the nature and degree of the annuitant's disability, if any. See Pet. App. 15.

a physical examination, found to be still totally disabled, and her annuity was indefinitely continued.[3]

Since her retirement, petitioner has been able to secure other employment, yielding substantially the same income as her employment with the Army Finance Center prior to July 29, 1949 (Fdng. 14, J. A. 19). Accordingly, petitioner "has not suffered any substantial injury as a result of her disability retirement" (Fdng. 14, J. A. 19).

On these facts, the district court concluded that the decision of the Board of Appeals and Review of July 8, 1949, was the final decision of the Commission (J. A. 20); that that decision was lawful and in accordance with the provisions of the Civil Service Retirement Act and the applicable regulations of the Commission (J. A. 20); that the court had no jurisdiction to review the evidence upon which the determination was based (J. A. 20); that the court had no jurisdiction to determine whether petitioner was physically able to perform the duties of a clerk-typist, CAF-2 (J. A. 20); that the action was barred by laches (J. A. 21); that the subse-

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[3] As noted in Finding 13, J.A. 19, this third examination was pending at the time of the trial below. After the appeal had been noted, the Civil Service Commission was requested to advise the Department of Justice of the result of this examination. By letter dated March 5, 1954, addressed to the Department of Justice, the Commission stated that "we have contacted our Retirement Division and find that Mollie Sawyer was given a physical examination on June 16, 1953. The examining doctors' report was considered by the Commission's Medical Officers who found that Mollie Sawyer was still totally disabled for useful and efficient service within the meaning of the retirement law and they directed the indefinite continuance of her annuity."

quent determinations of continuing disability rendered moot any controversy as to the validity of the decision of the Board of Appeals and Review of July 8, 1949 (J. A. 21); that petitioner was not prejudiced by the refusal of the Commission to disclose the medical reports to her (J. A. 18);[4] and that petitioner had failed to show any substantial injury for which any equitable relief should be given (J. A. 21). The complaint was accordingly dismissed (J. A. 21).

The court of appeals affirmed. In a *per curiam* opinion, it noted that the district court "made findings of fact and entered conclusions of law, upon the basis of which judgment was entered dismissing the complaint. Among the conclusions of law was one that the action was barred by laches, which had been specially pleaded" (Pet. App. 19). After so noting, the court below stated that "[t]he appeal presents no basis for reversing the judgment of the District Court and it accordingly is Affirmed" (Pet. App. 19).

ARGUMENT

Both courts below have concluded on the evidence that petitioner's claim is barred by laches.

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[4] The petition states that "[s]trangely enough, the medical reports made by the government doctors which was [sic] the basis of the evidence against the petitioner were introduced in evidence at the trial" (Pet. 4). In this connection, it should be observed that these medical reports were produced in court by respondents in response to a subpoena issued by petitioner (J.A. 22, 74). Further, the record discloses that respondents' counsel was most reluctant to introduce these reports in evidence, and that he did so solely because of petitioner's contention that she had not seen all the medical evidence (J.A. 72-73, 79-81).

We submit that these concurrent rulings are clearly correct and that further review is not warranted.[5]

It is well settled that an employee's lack of diligence in seeking reinstatement or back pay constitutes laches which bars his claim even though that claim may be meritorious. The doctrine of laches has been applied where the employee's delay in effectively asserting his claim was a period of eleven months (*Norris* v. *United States,* 257 U. S. 77), fourteen months (*Morse* v. *United States,* 59 C. Cls. 139, appeal dismissed, 270 U. S. 151, rehearing denied, 295 U. S. 768), sixteen months (*Grasse* v. *Snyder,* 192 F. 2d 35 (C. A. D. C.)), eighteen months (*Caswell* v. *Morgenthau,* 98 F. 2d 296 (C.A. D. C.), certiorari denied, 305 U. S. 596), and twenty-two months (*Arant* v. *Lane,* 249 U. S. 367). Cf. *Nicholas* v. *United States,* 257 U. S. 71; *Wunderle* v. *Kimball,* 201 F. 2d 707 (C. A. D. C.); *Baxter* v. *Pace,* 193 F. 2d 20 (C. A. D. C.).

The considerations underlying the doctrine were succinctly stated by this Court in *Arant* v. *Lane, supra,* at 372:

> When a public official is unlawfully removed from office, whether from disregard of the law by his superior or from mistake as to the facts of his case, obvious considerations of public policy make it of first importance that he

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[5] As we read the court of appeals' opinion that court found it unnecessary to reach any question other than that of laches. Since we believe it plain that the issue of laches was correctly decided and that it is completely dispositive of this case, we confine ourselves in this brief to that ground of decision.

> should promptly take the action requisite to effectively assert his rights, to the end that if his contention be justified the Government service may be disturbed as little as possible and that two salaries shall not be paid for a single service.
>
> Under circumstances which rendered his return to the service impossible, except under the order of a court, the relator did nothing to effectively assert his claim for reinstatement to office for almost two years. Such a long delay must necessarily result in changes in the branch of the service to which he was attached and in such an accumulation of unearned salary that, when unexplained, the manifest inequity which would result from reinstating him renders the application of the doctrine of laches to his case peculiarly appropriate in the interests of justice and sound public policy.

These observations are controlling here. This action was brought on August 13, 1951, approximately two years after the final administrative determination which petitioner now challenges.[6] Under the decisions cited above, petitioner's suit is plainly too late.

The fact that petitioner, after her retirement,

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[6] The Board of Appeals and Review of the Civil Service Commission, whose determination is final under the regulations of the Commission (5 CFR 29.15(f), see Pet. App. 18), notified petitioner of its decision by letter dated July 8, 1949 (J.A. 107). Petitioner was separated from her position on July 29, 1949 (J.A. 17-18), and her retirement annuity became payable on August 1, 1949 (J.A. 18).

wrote a series of letters to the Civil Service Commission and to members of the Commission requesting reconsideration, does not render the doctrine of laches inapplicable. Since further reconsideration by the Commission was wholly a matter of grace (J. A. 55-56) and the grant of a rehearing addressed to its discretion (cf. *United States* v. *Pierce Auto Lines,* 327 U. S. 515, 535), these letters were no substitute for effective legal action. Cf. *Wunderle* v. *Kimball, supra; Grasse* v. *Snyder, supra.* As this Court pointed out in *Arant* v. *Lane, supra* at 372, it is "of first importance that [a removed employee] should promptly take the action requisite to *effectively* assert his rights * * *." [emphasis added].

Nor is it material that petitioner has been able to obtain other employment, yielding substantially the same income (J. A. 19). Although the Government's liability for accrued compensation would, accordingly, not be large, the fact nevertheless remains that the Government would be obliged, to some extent, to pay two salaries for a single service. Moreover, the factor of duplicate payment is only one of the two considerations upon which the doctrine of laches is grounded in these cases. If it were the sole consideration, a discharged employee's claim for reinstatement would remain alive so long as the employee earned an equivalent income in other employment and would be enforceable at some indefinite future date when the employee's earnings decreased. Equally important, however, is the consideration that "the Government service

may be disturbed as little as possible." *Arant* v. *Lane, supra* at 372. As this Court pointed out in that case, "a long delay must necessarily result in changes in the branch of the service to which [the employee] was attached." *Ibid.*

CONCLUSION

For the foregoing reasons, it is submitted that the petition for a writ of certiorari should be denied.

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No. 571

IN THE

Supreme Court of the United States

October Term, 1954

MOLLIE SAWYER, *Petitioner,*

v.

ROBERT T. STEVENS, Secretary of the Army, et al,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR REHEARING ON THE PETITION FOR A WRIT OF CERTIORARI

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To the Honorable Chief Justice, and the Associate Justices of the Supreme Court of the United States:

The petitioner, Mollie Sawyer, prays for a rehearing on the petition for a writ of certiorari directed to the United States Court of Appeals for the District of Columbia Circuit, which was denied by this Court on March 7, 1955, and files this petition for rehearing within 25 days of the date of denial of the petition as is required by the rules of this Court.

In submitting this petition for rehearing, the petitioner desires to invite to the Court's attention that the sole

ground urged by the counsel for the Respondents in their brief was that the Courts below have decided the issues of law and fact against the petitioner on the grounds that she had been guilty of laches in not using diligence in prosecuting her claim.

No comment was made in the brief of the Respondents before this Court to justify the unamerican procedure through which this petitioner had been forcibly retired from governmental service. No attempt was made to justify the facts that the petitioner has been involuntarily retired upon secret charges, and upon secret evidence, affording her no opportunity at all to rebut the secret charges filed against her. For the first time at the trial of this cause in the United States District Court was the petitioner ever advised of the charges against her which were the basis of the involuntary dismissal. Therefore, in order to completely refute the contention that the petitioner was guilty of laches in prosecuting her claim, petitioner would invite the Court's attention to the following facts, and the authorities relating to the question of laches.

The Action of the Petitioner Was Not Barred by Laches and There is a Total Lack of Evidence to Sustain Any Such Finding.

At the very outset petitioner invites the Court's attention to the fact that under the decisions of the United States Court of Appeals for the District of Columbia, the petitioner before resorting to relief in the Courts was required to exhaust all administrative remedies. If she had filed suit before exhausting such administrative remedies, the action brought would have been subject to dismissal.

Johnson v. *Nelson*, 180 F.2d 386, Certiorari denied by this Court 339 U.S. 991, 94 L.Ed. 1368.

There was no final denial in this cause until July 12, 1951 (JA 90) when Robert Ramspeck, Chairman of the Civil Service Commission, stated that they would give no further consideration to the appeal of the petitioner. Suit was filed on August 13, 1951 (JA 2) and certainly it cannot be said that the lapse of 30 days between the final denial by the Chairman of the Civil Service Commission and the filing date of the action is a sufficient length of time to constitute laches.

The respondents try to assert that an earlier date of the denial of the petitioner's right of action is in the record. The true fact is, that the Civil Service Commissioners under their own regulations could, at any time, reopen any appeal without regard to the passage of time, and it is only when they have made a decision that they will no longer reconsider the case that the appeal becomes a final one.

The Civil Service Commission Regulation, 5 C.F.R. 22.11 (e) (1949 Ed., 1954 Cum. Supp.), reads in part as follows:

> Reopened appeals. (1) The Commissioners may in their discretion, when in the judgment such action appears warranted by the circumstances, reopen an appeal at the request of the appellant, or his designated representative, or the employing agency concerned and may grant both parties an opportunity for a personal appearance. In connection with such reopened appeals, both parties will be afforded an opportunity to submit briefs or written representations.

This regulation has been construed by the United States Court of Claims in the case of *Oco A. Roberts* v. *United States* (No. 52-54) decided on March 1, 1955. In construing this regulation the Court of Claims, speaking through Judge Littleton, said, the Commission was clearly

entitled to entertain an appeal or to reopen one. In the *Roberts* case, the appeal was reopened at the instance of the General Services Administration which had not timely filed an appeal from the Regional Office of the Civil Service Commission ordering an employee to be reinstated. Despite the fact that the agency in question had not timely filed an appeal, the Court held that the Civil Service Commission could, on their own motion, extend the time and hear the appeal of the agency, and in that case the Board of Appeals and Review reversed the finding of the Regional Office.

The legal position taken by the Respondents that the Civil Service Commission had no right or authority to reopen the case of the petitioner when the letter was written to the Chairman of the Civil Service Commission on July 6, 1951 (JA 88) is wholly without merit, and, in fact, contrary to the precedents of the United States Civil Service Commission.

In this connection, petitioner invites the Court's attention to the case of *Reynolds et al* v. *Lovett et al,* 201 Fed. 2d 181, certiorari denied 345 U.S. 926. In that case, the U. S. Court of Appeals for the District of Columbia ordered that the plaintiffs be restored retroactively to positions and grades in the Mare Island Naval Shipyard as of the date of their illegal reductions in grade in the year 1947. The judgment of the U. S. District Court for the District of Columbia was entered on May 23, 1953. Following this judgment, the U. S. Civil Service Commission, who had approved all of these illegal and unlawful reductions in grade of veteran preference eligibles, issued a new regulation 22.11 and reconsidered all appeals which had been filed in the year 1947, and reversed hundreds of cases of veteran preference eligibles, ordering their restoration in some cases six years retroactively to the dates of the illegal reductions in grade.

See *Goodwin* v. *United States*, 118 F.Supp. 369

Therefore it is a little bit of the ridiculous for counsel for the respondents now to state that the claim of the petitioner for a fair and open hearing with knowledge of the evidence against her was barred by laches on the date that this action was filed. Such a contention cannot be reconciled with the established precedents.

The Only Showing on the Question of Laches Was a Mere Lapse of Time.

The only evidence offered at the hearing in this case which relates to the question of laches which was invoked was the mere lapse of time.

The burden of the proof of laches was on the respondents and not on the petitioner. It was an affirmative defense which had to be pleaded. All the proof offered in this connection was that there might have been a lapse of time during which this petitioner might have filed suit on her claim.

Since the defense of laches was solely predicated upon a mere lapse of time, the proof offered was wholly insufficient.

By a long line of authorities it has long since been held that a mere lapse of time is insufficient to establish laches.

Fed. Digest Vol. 29, Equity 71(1).

Words and Phrases Judicially Defined Vol. 24 Page 96, 97 and cases cited.

Furthermore, if it is as now contended by counsel of the respondents that this case below was decided solely on the grounds of laches, then the decisions below conflict with the decisions of the following United States Court of Appeals for the various Circuits shown.

Johnson v. *Umsted*, 64 F.2d 316, 8th CCA

Kansas City Southern Railway v. *May*, 2 F.2d 680, 8th CCA

Pure Oil Co. v. *Hyman*, 95 F.2d 22, 7th CCA

City of Roswell, N.M. v. *Mountain States Telephone & Telegraph Co.*, 78 F.2d 379, 10th CCA

Detroit Trust Co. v. *Dunitz*, 59 F.2d 905, 6th CCA

Davidson v. *Grady*, 105 F.2d 405, 5th CCA

Bogert v. *Southern Pacific Co.*, 244 Fed. 61, 2nd CCA

R.F.C. v. *Harrisons & Crosfield*, 204 F.2d 366, Cert. denied 346 U.S. 854, 2nd CCA

Lawson v. *Haynes*, 170 F.2d 741, 10th CCA

It is the province of this Court to supervise the decisions of the various United States Court of Appeals on questions of law, and since the decision of the Court of Appeals below conflicts with all of the decisions of the Courts of Appeals cited above, it would seem to be clear that it was the plain duty of this Court under its rules to grant the rehearing on the petition for a writ of certiorari.

In Presenting This Petition for Rehearing the Petitioner Has Not Abandoned Any Grounds Stated in the Original Petition.

In submitting this petition for rehearing and in addition to the grounds stated herein, the petitioner reiterates each and every ground set forth in the original petition for a writ of certiorari.

It is believed that in the interest of right and Justice this petition for a rehearing should be granted.

WHEREFORE, the petitioner prays, that the order of this Court denying the petition for a writ of certiorari to the United States Court of Appeals for the District of

Columbia Circuit entered on March 7, 1955 be vacated and set aside, and that upon the basis of this petition for rehearing the Court grant the petition for the writ of certiorari as prayed for in this cause.

Respectfully submitted,

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Washington 5, D. C.

CERTIFICATE OF COUNSEL PURSUANT TO RULE 58 PAR. 2.

I, Claude L. Dawson, Attorney for the Petitioner, do hereby certify that the petition for a rehearing on the petition for a writ of certiorari is presented in good faith, and not for delay, and is restricted to the grounds therein specified.

CLAUDE L. DAWSON
Counsel for the Petitioner.